

**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

UNIVAC DENTAL COMPANY, and
LACTONA CORPORATION

Plaintiffs,

v.

DENTSPLY INTERNATIONAL,
INC.,

Defendant.

Civil Action No. 1: CV-07-0493
Hon. Christopher C. Conner

Filed Electronically

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

For the reasons set forth in the attached Memorandum of Law, Plaintiffs Univac Dental Company ("Univac") and Lactona Corporation ("Lactona") (referred to hereafter as "plaintiffs"), by and through their undersigned counsel, move this Court for an order granting them partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Pursuant to the doctrine of collateral estoppel, there is no genuine dispute of material fact on the issues which were already litigated and determined in *United*

States v. Dentsply Int'l, Inc., 399 F.3d 181 (3d Cir. 2005) (*Dentsply II*), reversing 277 F. Supp. 2d 391 (D. Del. 2003) ("*Dentsply I*"), in which Dentsply International, Inc. ("Dentsply") was a defendant and in which the Court rendered a final judgment on the merits. Plaintiffs now move for an order granting them partial summary judgment on the following bases:

1. Issue preclusion applies when issues identical to the ones presented in the case at bar were decided in *Dentsply II* and *Dentsply I*.

2. Based on the opinion and findings of the United States Court of Appeals for the Third Circuit in *Dentsply II* and the undisturbed findings of the United States District Court for the District of Delaware in *Dentsply I*, Dentsply is collaterally estopped from arguing that it is not in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

3. As a matter of law, the issues of market definition and monopoly power, anticompetitive exercise of that monopoly power, lack of business justification, and certain effects on Dentsply's competitors, including plaintiffs, must be resolved in favor of plaintiffs and against Dentsply.

4. Dentsply is precluded from challenging legal and factual determinations previously litigated and decided by the Third Circuit and the District Court, which are also at issue in plaintiffs' Section 2 claim against Dentsply in the case at bar. As set forth in the plaintiffs' concurrently filed

memorandum of law in support of their motion for partial summary judgment, Dentsply is collaterally estopped from disputing the legal and factual determinations made in *Dentsply I* and *Dentsply II*.

June 22, 2009

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